FIU Law

Intelligent Entertainment: Algorithmic Generation and Regulation of Creative Works

25th FIU Law Symposium

Hosted by FIU Law Review

Program

INTELLIGENT ENTERTAINMENT: ALGORITHMIC GENERATION AND REGULATION OF CREATIVE WORKS

Welcome to FIU Law Review's Fall 2019 Symposium

Computer software is increasingly creating much of the work that entertains the public: digital graphics, songs, paintings, news stories, and even social media influencer feeds. U.S. and foreign copyright and patent offices confront the questions of whether to recognize intellectual property rights in algorithmically generated processes or works and how to allocate those rights across programmers, program users, and the bots. Moreover, courts and legislators are peppered with demands that they give legal effect to algorithmic means of preventing or remediating infringement of creative works, such as YouTube's Content ID or Audible Magic CopySense. Advocates of free speech and open competition often complain that algorithmic enforcement of copyrights threatens false positives that result in wrongful takedowns of criticism, commentary, remix, or parody. Improvements in machine learning and other artificial intelligence techniques may improve the accuracy of automated fair use or other enforcement-related determinations. This may give rise to more campaigns for legislation or judicial standards that insist on the rapid deployment of automated "upload filters" and the like, as with the Directive on Copyright in the Digital Single Market. Patent and trademark examiners could use similar techniques to prevent the issuance of rights that conflict with prior grants or encroach upon the public domain.

Intelligent Entertainment: Algorithmic Generation and Regulation of Creative Works, presented by the *FIU Law Review*, will bring together prominent scholars from around the world to analyze the intersection of intellectual property and artificial intelligence, particularly, but not exclusively, in the copyright industries and global creative economies. Questions and topics to be raised include: how to legislate or administer exclusive rights in works that might never have been made without software or by humans unaided by artificial intelligence; to what extent creative works produced by machine learning constitute unauthorized derivative works or other invasion of the rights related to the data set analyzed during the production process; whether access to large datasets on audience reactions is changing the output and business models of creative industries; when and how enforcement of rights accruing to creative persons or brand managers may be improved by deploying machine learning or other artificial intelligence techniques;

the status of text and data mining under U.S. and foreign laws; and threats to human-made intellectual property rights posed by increasingly powerful software-based systems for creating similar works.

Presented by:
FIU LAW

Intelligent Entertainment: Algorithmic Generation and Regulation of Creative Works

Friday, November 8, 2019

REGISTRATION
8:00 AM – 9:00 AM
Registration and Continental Breakfast

WELCOME AND INTRODUCTION
9:00 AM – 9:30 AM

Dean Antony Page, *Florida International University College of Law*
Prof. Hannibal Travis, *Florida International University College of Law*

FIRST PANEL: ARTIFICIAL AUTHORSHIP AND INTELLIGENT PROPERTIES
9:30 AM – 11:00 AM

Prof. Yvette Liebesman, *Saint Louis University School of Law*
Prof. Jorge Roig, *Jacob D. Fuchsberg Law Center at Touro College*
Prof. Johanna K. P. Dennis, *Golden Gate University*

Moderator:
Prof. Hannibal Travis, *Florida International University College of Law*

COFFEE BREAK
11:00 AM – 11:15 AM

KEYNOTE ADDRESS
11:15 AM – 12:00 PM

Dr. Matthew Eric Bassett, *Barcelona Graduate School of Economics*

LUNCH
12:00 PM – 1:30 PM

SECOND PANEL: INTELLIGENT ENFORCEMENT AMIDST ARTIFICIAL DISTINCTIONS
1:30 PM – 3:00 PM

Prof. Peter Yu, *Texas A&M University School of Law*
Prof. Saurabh Vishnubhakat, *Texas A&M University School of Law*
Prof. Clark D. Asay, *Brigham Young University Law School*

Moderator*:*

Prof. Janewa Osei-Tutu, *Florida International University College of Law*

COFFEE BREAK
3:00 PM – 3:15 PM

THIRD PANEL: GLOBAL INTELLIGENCE CONFRONTS COMPLEX ENFORCEMENT
3:15 PM – 5:00 PM

Prof. Martin Senftleben, *VU University Amsterdam*
Dr. Christian E. Mammen, *Womble Bond Dickinson*
Prof. Matthew Sag, *Loyola University Chicago School of Law*

Moderator:

Prof. Eric R. Carpenter, *Florida International University College of Law*

CLOSING REMARKS
5:00 PM – 5:30 PM

Prof. Hannibal Travis, *Florida International University College of Law*

ANTONY PAGE

Dean
Florida International University College of Law

Antony Page was named the third dean of the FIU College of Law in May 2018. An expert in corporate law, he teaches a wide range of courses including Contracts, Sales, Closely Held Business Organizations, Publicly Traded Corporations, Mergers & Acquisitions, International Law, and International Securities Regulation. His scholarly works have been published in high-impact journals such as the Michigan Law Review, Emory Law Journal, Stanford Social Innovation Review, and Boston University Law Review, and have been cited by numerous courts, including the U.S. Supreme Court. Prior to joining FIU Law, Dean Page served as Vice Dean and Professor of Law at the Indiana University Robert H. McKinney School of Law.

Dean Page earned his J.D. with distinction from Stanford Law School, where he was elected to Order of the Coif. He also earned an M.B.A. from Simon Fraser University in Vancouver and a B.Comm from McGill University in Montreal. Following law school, he clerked for the Honorable H.L. Hupp of the U.S. District Court for the Central District of California, and for the Honorable A.L. Alarcon of the U.S. Court of Appeals for the Ninth Circuit. His international professional experience includes private practice in the London and Los Angeles offices of New York-based law firm Sullivan & Cromwell, and service in the Canadian Department of Foreign Affairs as Second Secretary & Vice Consul in Thailand, Laos and Burma; Trade Commissioner in the Asia-Pacific South Division; and Assistant Trade Commissioner in the European Union Trade and Economic Relations Division.

FIRST PANEL: ARTIFICIAL AUTHORSHIP AND INTELLIGENT PROPERTIES

HANNIBAL TRAVIS

Professor of Law
Florida International University College of Law

Hannibal Travis teaches and conducts research in the fields of cyberlaw, intellectual property, antitrust, international and comparative law, and human rights. He joined FIU after several years practicing intellectual property and Internet law at O'Melveny & Myers in San Francisco, California, and at Debevoise & Plimpton in New York. He has also served as the Irving Cypen Visiting Professor of Law at the University of Florida, a Visiting Associate Professor of Law at Villanova University, and a Visiting Fellow at Oxford. He graduated summa cum laude in philosophy from Washington University, where he was named to Phi Beta Kappa. He graduated magna cum laude from Harvard Law School, where he served as a teaching assistant in philosophy classes taught at Harvard College. After law school, Professor Travis clerked for the United States District Court in Los Angeles, California. Professor Travis has published articles on copyright, trademark, and antitrust law in a variety of journals and books. He has also published works on antitrust law, telecommunications law, and net neutrality in American University Law Review, Hofstra Law Review, and Santa Clara Law Review.

His works have focused on the intellectual property implications of new technologies and user-generated content, as well as antitrust law as applied to broadband and Wi-Fi Internet access markets. He has contributed to symposia and edited volumes on the international and comparative law of copyright and performers' rights, including a piece on software contracts and copyright that was selected by West Group as one of the best articles relating to intellectual property law that was published in 2010. Professor Travis has also published widely on genocide, cultural survival, and human rights. He is currently an editorial advisory board member of Genocide Studies International (University of Toronto Press), and has served as a peer reviewer for manuscripts submitted to Cambridge University Press, Oxford University Press, Edinburgh University Press, Routledge, and Genocide Studies and Prevention (the journal of the International Association of Genocide Scholars). He has coached FIU's Jessup International Law Moot Court team, Lefkowitz Trademark Law Moot Court team, and BMI Copyright Law Moot Court team. He is a member of the Copyright Society of the USA and the American Law and Economics Association. Professor Travis is the faculty organizer of this *FIU Law Review* Symposium.

Professor Travis will serve as the moderator for the panel.

Yvette Joy Liebesman

Professor
Faculty Adviser for Intellectual Property Concentration
Saint Louis University School of Law

Professor Yvette Liebesman joined Saint Louis University School of Law in 2008. Her courses include Copyright, Intellectual Property Survey, Property, and Wills & Trusts. Professor Liebesman's research interests focus on copyright and trademark law and their intersection with art, science, and technology. She is often interviewed and quoted in the press regarding current copyright and trademark issues—her recent media appearances include (among others) quotes to the ABA Journal and CBS News over the Mike Tyson tattoo/Hangover Part II controversy and radio commentaries on the Supreme Court's ABC v. Aereo decision. Professor Liebesman received her Juris Doctor from Georgetown University Law Center. She clerked for the Honorable Helen E. Hoens of the Supreme Court of New Jersey, then practiced in the intellectual property transactional group at Ropes & Gray LLP in Boston, MA.

JORGE ROIG

Associate Professor of Law
Director of Neighborhood Programs
Touro Law Center

Jorge R. Roig is Associate Professor of Law and Director of Neighborhood Programs at the Touro Law Center. Professor Roig did his undergraduate studies at Harvard University, where he concentrated in Economics, with a focus on Microeconomics, Finance, Game Theory, Derivative Pricing and Econometrics. He then obtained his Juris Doctor from the University of California at Berkeley School of Law, where he also received a "Boalt Hall Law & Technology Certificate" for his coursework in Copyrights and Trademarks, Cyberlaw, Entertainment Law, Sports Law and Art Law, and his thesis: "Speaking in Code: The Question of First Amendment Coverage of Computer Source Code." Before becoming a professor, he served as Judicial Clerk to then Associate Justice, later Chief Justice, Federico Hernández Denton, at the Puerto Rico Supreme Court. He also served as Judicial Clerk to United States District Judge Salvador E. Casellas at the United States District Court for the District of Puerto Rico. Professor Roig then labored in private practice at Fiddler, González & Rodríguez, P.S.C., where he worked, among other things, in complex civil litigation and intellectual property matters for corporate clients. He also served as Assistant Secretary of Justice, in charge of the Office of Legal Counsel, the Legislative Liaison's Office, and the Contracts and Law No. 9 Division, of the Puerto Rico Department of Justice. Professor Roig's primary areas of teaching and research are: Constitutional Law; Internet and Technology Law; Intellectual Property (including Patents, Trademarks, Copyright, Trade Secrets, and other related state law matters); and Copyright Law.

JOHANNA K.P. DENNIS, PH.D.

Associate Professor of Law
Golden Gate University

Professor Johanna Dennis, Ph.D.EL, is Associate Director for Legal Writing and Research and an Associate Professor of Law. She develops upper-division legal writing courses in collaboration with the Associate Dean for Academic Affairs and the Director of Legal Writing. She teaches upper division writing, immigration, and intellectual property law courses. Professor Dennis draws on a range of experiences in law teaching. Prior to joining the faculty at GGU, she served on the full-time faculties at the University of Arkansas-Little Rock's Bowen School of Law, Northeastern University School of Law, Southern Illinois University School of Law, Southern University Law Center, Vermont Law School, Touro College Jacob D. Fuchsberg Law Center, and Florida A&M University College of Law.

DR. MATTHEW ERIC BASSETT

Chief Technology Officer
PRODA Ltd.

Adjunct Professor
Barcelona Graduate School of Economics

Dr. Bassett straddles the fence between the media industry and academia. He led the first data science group at NBCUniversal International and co-founded Gower Street Analytics, a London based-firm helping film distributors use data to make release and dating decisions. At the same time, he holds posts as an Associated Faculty Member of the Frankfurt Big Data Lab at Goethe Universität in Germany, on the Data Science Program at the Barcelona Graduate School of Economics, and as an expert evaluator of data science programs for the European Commission. Dr. Bassett is currently serving as the Chief Technology Officer of PRODA, a startup company that helps the commercial real estate finance industry better understand its data. Dr. Bassett holds a PhD in Mathematics from the Queen Mary University of London and is still active in research in non-commutative geometry, number theory, and machine learning.

PANEL 2: INTELLIGENT ENFORCEMENT AMIDST ARTIFICIAL DISTINCTIONS

J. JANEWA OSEI-TUTU

Associate Professor of Law
Florida International University College of Law

Professor Osei-Tutu holds an LL.M., with distinction, in International and Comparative Law from McGill University, one of the premier academic institutions in Canada. She wrote her graduate thesis on trade-related intellectual property as it relates to developing countries, and continues to write in this area. Drawing on her academic and practical experiences, Professor Osei-Tutu's scholarship focuses on the relationship between trade-related intellectual property, human development, human rights, and culture.

She joined academia after several years of intellectual property (IP) practice as Legal Counsel to the Patent & Trademark Office, and the IP Policy Directorate at Industry Canada (USPTO equivalent). In that capacity, Osei-Tutu advised the Canadian government on the IP aspects of certain trade negotiations, as well as IP submissions to international organizations, such as the WIPO and the WTO. In addition, she advised on complex litigation and legislative reform of Canada's IP laws. Osei-Tutu's legal experience includes commercial law practice with leading law firms in Canada and Ghana. She also clerked as an Associate Legal Officer for Trial Chamber II at the United Nations International Criminal Tribunal for Rwanda in Tanzania. Professor OseiTutu is a member of the bar in New York and Ontario (inactive).

Professor Osei-Tutu will serve as the moderator for the panel.

PETER YU

Professor of Law
Texas A&M University

Peter K. Yu is Professor of Law, Professor of Communication and Director of the Center for Law and Intellectual Property at Texas A&M University. He previously held the Kern Family Chair in Intellectual Property Law at Drake University Law School and was Wenlan Scholar Chair Professor at Zhongnan University of Economics and Law in Wuhan, China. He served as a visiting professor of law at Bocconi University, Hanken School of Economics, Hokkaido University, the University of Haifa, the University of Helsinki, the University of Hong Kong, the University of Strasbourg and Washington and Lee University. He also founded the nationally renowned Intellectual Property & Communications Law Program at Michigan State University, at which he held faculty appointments in law, communication arts and sciences, and Asian studies. Born and raised in Hong Kong, Professor Yu is a leading expert in international intellectual property and communications law. He also writes and lectures extensively on international trade, international and comparative law, and the transition of the legal systems in China and Hong Kong.

SAURABH VISHNUBHAKAT

Professor of Law
Texas A&M University

Saurabh Vishnubhakat writes and teaches on intellectual property law, civil procedure, and administrative law, particularly from an empirical perspective. He holds a joint appointment as Professor in Texas A&M University's Dwight Look College of Engineering and is a fellow of the Duke Law Center for Innovation Policy. Until 2015, Professor Vishnubhakat served in the United States Patent and Trademark Office as the principal legal advisor to the agency's first two chief economists. He was also a faculty fellow at the Duke Law School and a postdoctoral associate at the Duke Center for Public Genomics. He holds a J.D. and LL.M. in intellectual property from the Franklin Pierce Law Center, now the University of New Hampshire School of Law, where he was an editor of the Law Review. He also holds a B.S. in chemistry from the Georgia Institute of Technology. He is admitted to the bars of Illinois, Texas, the Federal Circuit, and the Supreme Court.

CLARK D. ASAY

Professor of Law
Brigham Young University

Clark Asay is a Professor of Law at Brigham Young University. Before becoming a professor at Brigham Young University, he was a Visiting Assistant Professor and Shughart Scholar at Penn State University's Dickinson School of Law from 2012-2014. Prior to entering legal academia, Professor Asay worked at Amazon's Lab126 and supported the Kindle, Kindle Fire, and Amazon Fire teams. Also, Professor Asay worked at the law firm of Wilson Sonsini Goodrich & Rosati, where he practiced in the field of technology transactions and intellectual property licensing. Professor Asay's research and teaching interests focus on intellectual property law, technology, and innovation. He has published papers relating to patents, copyright, open source software licensing, and information privacy. He has taught courses on intellectual property law, information privacy, and contracts. Professor Asay is a graduate of Stanford Law School, where he was an Executive Editor for the Stanford Law Review. Professor Asay also earned an M.Phil from the University of Cambridge and a B.A., *summa cum laude*, from Brigham Young University.

ERIC R. CARPENTER

Professor of Law
Florida International University College of Law

Military law, death penalty litigation, sexual assault law and policy—Professor Eric Carpenter is a nationally-recognized expert. He routinely provides relevant, insightful, engaging, and unbiased commentary on these topics to the media, including The Today Show, CBS Radio, the Wall Street Journal, Time Magazine, the Associated Press, The Hill, and Stars & Stripes, to name a few.

More than a scholar and expert, he has lived and worked in the world of military justice. He served in the Army as a helicopter pilot and is a graduate of Ranger School and Airborne School. He was a judge advocate, serving as prosecutor, supervising defense counsel, and Chair of the Criminal Law Department at the Army's law school. He deployed to Afghanistan in 2003. And as an elected member of the National Institute of Military Justice and the ABA's Military Justice Committee, he writes influential articles on military justice system reform.

Not content to comment from the sidelines, he is still active in death penalty litigation. He is a consultant on the 9/11 commissions at Guantanamo Bay, Cuba, and continues to advise judge advocates who defend service members in capital courts-martial. His experience is deep—while in the Army, he served as the lead defense attorney on a capital murder case and was part of the task force that wrote the current regulations for capital litigation in the Army. He is a member the National College of Capital Voir Dire and speaks regularly on this trial technique around the country. He has written several articles on how jurors view the death penalty.

Today, he actively works to improve the legislation and law enforcement of sexual assault. As an elected member of the American Law Institute, he works on the ALI's project to reform the Model Penal Code's sexual assault and related provisions. The subject isn't new to him—while in the Army, he helped develop training and policy to address the sexual assault issue in the military. He focuses his scholarship on improving law enforcement processing on sexual assault cases, and providing relevant information that policy makers can use when deciding how to reform the civilian and military systems.

Professor Carpenter will serve as the moderator for the panel.

MARTIN SENFTLEBEN

Professor
VU University of Amsterdam

Senior Consultant
Bird & Bird

Martin Senftleben is Professor of Intellectual Property, VU University Amsterdam, and Senior Consultant, Bird & Bird. His current research topics concern trademark law and the preservation of the public domain, the liability of online platforms for the infringement of trademark rights, the introduction of flexible fair use copyright limitations, and the enforcement of copyright in the digital environment. Mr. Senftleben studied law at the University of Heidelberg. After graduation he worked as a researcher at the Institute for Information Law of the University of Amsterdam, and the Max Planck Institute for Intellectual Property Law in Munich. In 2004, he was awarded a doctorate by the University of Amsterdam for his thesis "Copyright, Limitations and the Three-Step Test – An Analysis of the Three-Step Test in International and EC Copyright Law." From 2004 to 2007, Mr. Senftleben worked as a legal officer in the Trademarks, Industrial Designs and Geographical Indications Law Division of the World Intellectual Property Organization (WIPO) in Geneva. In 2007, he was appointed Professor of Intellectual Property at the VU University Amsterdam. In 2008, he joined Bird & Bird as a Senior Consultant. His publications in Dutch, English, French, and German cover substantive and procedural aspects of the protection of intellectual property. Mr. Senftleben is a member of the Executive Committee of ALAI, a member of the State Committee advising the Dutch Minister of Justice on copyright issues, and editor-in-chief of the Dutch journal Copyright, Media and Information Law (Tijdschrift voor auteurs-, media- en informatierecht).

DR. CHRISTIAN E. MAMMEN

Partner
Womble Bond Dickinson

Dr. Christian E. Mammen has more than 20 years of experience guiding Silicon Valley and global tech and life sciences clients in high-stakes patent and intellectual property litigation. He has substantial lead counsel experience and has led both large and small trial teams. He has also served as lead counsel on appeals before the Ninth and Federal Circuits. Dr. Mammen is an accomplished scholar, with significant teaching and academic experience. His clients include companies in the software, telecom, microelectronics and pharmaceutical/biotech/life sciences sectors. He has recently marked wins for clients on a variety of unconventional issues. He speaks and writes frequently on IP, litigation, and technology issues. Dr. Mammen holds a doctorate in law from Oxford University and has held visiting faculty positions at UC Hastings School of Law, Berkeley Law School, Stanford Law School and Oxford University.

MATTHEW SAG

Georgia Reithal Professor of Law
Associate Dean for Faculty Research and Development
Loyola University Chicago

Matthew Sag is a Professor of Law at Loyola University Chicago. Professor Sag has also taught at DePaul University, the University of Virginia, and Northwestern University. Prior to his academic career, Matthew Sag practiced as an intellectual property attorney in the United Kingdom with Arnold & Porter and in Silicon Valley, California with Skadden, Arps. Professor Sag earned his law degree with honors from the Australian National University and clerked for Justice Paul Finn of the Federal Court of Australia. Professor Sag's research focuses on the intersection of law and technology and law and economics. He is a well-known expert on Copyright law whose articles have been cited in Federal Court cases and in briefs to the United States Supreme Court. Professor Sag's work has been published in, among other places, Nature, the California Law Review, Northwestern Law Review and Georgetown Law Review. Professor Sag is the co-founder of ScotusOA.com and he is an Advisory Board Member of the HathiTrust Research Center.

NOTES:

FIU | Law

FLORIDA INTERNATIONAL UNIVERSITY